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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,674	02/22/2002	Fermin Ruiz	PGI6044P0830US	2114

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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
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CHICAGO, IL 60661

EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 09/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/081,674	Applicant(s) RUIZ ET AL.	
	Examiner Jeffrey L. Gellner	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,8,16,18,23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18,23 and 24 is/are allowed.
- 6) ☒ Claim(s) 1,8,16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,8, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kozak et al. (US 4,983,068) in view of Allen (US 4,623,282).

As to claim 1, Kozak et al. discloses protective cover (Figs. 1-3) capable of protection of agricultural products, the protective cover sized to permit the cover to be positioned generally about an associated agricultural product, the cover being formed from a single ply nonwoven fabric (from “non-woven spun bonded, polypropylene fabric” of col. 2 lines 45-60) consisting of thermoplastic polymers (from “non-woven spun bonded, polypropylene fabric” of col. 2 lines 45-60) having a basis weight of 152 g/m², said nonwoven fabric exhibiting the capability to modify the ripening of the agricultural product prior to harvesting while retarding passage of dust and insects; the fabric with a seam joint that is heat bonded (“heat sealing” of col. 2 lines 35-44). Not disclosed is the basis weight from 10 to 100 g/m² and printing on the fabric that is capable of modifying the ripening of the agricultural product by alteration of light transmission. Allen, however, discloses a material with printing (indicia shown in Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Kozak et al. by adding the printing of Allen so as to warn individuals of any danger and to lower

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the basis weight from 10 to 100 g/m² so as to produce lighter product. The printing would inherently alter light transmission that would be capable of modifying fruit ripening.

As to claim 8, Kozak et al. as modified by Allen further disclose a means for affixing the protective cover about an agricultural product (“stables” of col. 2 lines 30-44).

As to claim 16, Kozak et al. discloses protective cover (Figs. 1-3) capable of protection of agricultural products, the protective cover having a tubular configuration (see Fig. 1) sized to permit the cover to be positioned generally about an associated agricultural product, the cover being formed from a single ply nonwoven fabric (from “non-woven spun bonded, polypropylene fabric” of col. 2 lines 45-60) consisting of thermoplastic polymers (from “non-woven spun bonded, polypropylene fabric” of col. 2 lines 45-60), said nonwoven fabric exhibiting the capability to modify the ripening of the agricultural product prior to harvesting while retarding passage of dust and insects. Not disclosed is printing on the fabric that is capable of modifying the ripening of the agricultural product by alteration of light transmission. Allen, however, discloses a material with printing (indicia shown in Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Kozak et al. by adding the printing of Allen so as to warn individuals of any danger. The printing would inherently alter light transmission that would be capable of modifying fruit ripening.

Allowable Subject Matter

Claims 18, 23, and 24 are allowed over the art of record.

Response to Arguments

Applicants' arguments filed 29 June 2006 have been fully considered but they are not persuasive. Applicants' arguments are: (1) Kozak et al. is for controlling soil erosion, not related to the claimed invention, and therefore is a geotextile filled with crushed scrap glass to function properly which contradicts MPEP 2143.01 that states that "the proposed modification cannot render the prior art unsatisfactory for its intended purpose" (Remarks bottom of page 6 to bottom of page 7); (2) No motivation to combine Allen with Kozak et al. (Remarks page 8, middle of page); and, (3) neither Kozak et al. nor Allen teach or suggest a cover sized to permit positioning generally about an associated agricultural product (Remarks page 9, top of page).

As to argument 1, at claim 3 lines 43-45 of Kozak et al. is found the language of "[w]hen the construction bags are to be used in soil erosion control applications" and at col. 6 line 9 is found the language of "[i]n soil erosion applications." These phrases imply that the bag can be used for other applications that may not include the use of glass. Further, even if the glass were used to fill the bag it would still meet the language of Applicants' claims because the transitionals are considered open ended (for example, "comprising" of claim 1, line 8). Additionally, the bag (cover) could function as a cover of agricultural products when filled with glass. That is, this use is not precluded by the glass.

As to argument 2, Examiner considers there to be motivation to combine Allen with Kozak et al. because both deal with structures in or on the soil which are not to be disturbed. Hence, it would be obvious to add the warning tape of Allen to the bag of Kozak et al. to warn others, for example, not to trip or fall.

As to argument 3, Examiner considers the size of the bag of Kozak et al. as shown in Fig. 1, for example, to be capable of covering and protecting an agricultural product because these products come in a wide variety of sizes from banana inflorescences to stalks of corn to single grapes. Therefore, virtually any size bag of Kozak et al. would cover some agricultural product.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'J. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner
Primary Examiner
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